

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 14, 2006

STATE OF TENNESSEE v. JAMES A. JAMES

**Direct Appeal from the Criminal Court for Sullivan County
Nos. S43,910; S44,229; S44,891 Phyllis H. Miller, Judge**

No. E2006-00687-CCA-R3-CD - Filed January 12, 2007

The appellant pled guilty in the Sullivan County Criminal Court to several offenses and received a total effective sentence of fifteen years to be served on probation. Subsequently, the trial court revoked his probation and ordered that he serve the sentences in confinement. On appeal, the appellant admits that he violated probation but claims that the court erred by ordering him to serve his sentences in confinement. Upon review of the record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

William A. Kennedy, Blountville, Tennessee, for the appellant, James A. James.

Paul G. Summers, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Barry Staubus, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On July 24, 2001, the appellant pled guilty in case number S43,910 to violating a motor vehicle habitual offender (MVHO) order and misdemeanor assault; in case number S44,229 to violating a MVHO order; and in case number S44,891 to two counts of failure to appear. In each case, the appellant received an effective five-year sentence, and the trial court ordered that he serve the five-year sentences consecutively, for a total effective sentence of fifteen years. Although the appellant was sentenced as a Range III, persistent offender, the trial court ordered that he serve the sentences on supervised probation.

On November 14, 2005, a probation violation warrant was issued, alleging that the appellant had violated probation by (1) being charged on May 2, 2005, with violating a MVHO order and driving on a revoked license, being charged on August 31, 2005, with driving on a revoked license and felony theft, and being charged on October 8, 2005, with driving on a revoked license; (2) failing to report these new charges to his probation officer; (3) changing his address and employment without notifying his probation officer; (4) failing to report to his probation officer in March, June, and August 2005; (5) being seven months behind in paying his probation supervision fees; and (6) failing to pay his court costs and fines. At the probation revocation hearing, the appellant admitted to violating his probation. He testified that he had to drive to and from work and that he fell behind in paying his court fees and fines because he had to pay child support and tickets. He stated that he failed to report to his probation officer twice, once in March because he had the flu and once because he was incarcerated. He said that if the trial court would place him back on probation, his brother would drive him to and from work and he would pay his fines with his income tax refund.

The trial court revoked the appellant's probation and ordered that he serve his sentences in confinement. On appeal, the appellant claims, without explanation, that "incarceration for fifteen years is not necessary" and that "[l]esser punishment could serve the ends of justice." However, as this court has repeatedly stated, upon finding by a preponderance of the evidence that the appellant has violated the terms of his probation, the trial court is authorized to order an appellant to serve the balance of his original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310, -311(e). In this case, the appellant admitted to various probation violations. Therefore, the trial court could order him to serve his sentences in confinement.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgments of the trial court.

NORMA McGEE OGLE, JUDGE